Calendar No. 945

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-657

TO DECLARE THAT THE UNITED STATES HOLDS IN TRUST FOR THE PASCUA YAQUI TRIBE OF ARIZONA CERTAIN LAND IN PIMA COUNTY, ARIZONA

OCTOBER 1 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

Mr. COHEN, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 4364]

The Select Committee on Indian Affairs, to which was referred the bill (H.R. 4364) to declare that the United States holds in trust for the Pascua Yaqui Tribe of Arizona certain land in Pima County, Arizona, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

The amendments are as follows:

1. On page 2, line 1 strike all through line 13 and substitute in lieu thereof the following:

1. The east half of southeast quarter of Section 22;
2. The northeast quarter of northeast quarter, south half of northeast quarter, north half of southeast quarter, south half of northwest quarter, southwest quarter of Section 23:
3. The southwest quarter of northwest quarter of Section 24; and
4. The southeast quarter of northeast quarter of north west quarter of Section 24.

2. On page 2, at the end of line 13, add a new Section 2 as follows:

Nothing in this Act shall deprive any person or entity of any legal existing right of way, legal mining claim, legal grazing permit, legal water right or other legal right or legal interest which such person or entity may have in land described in Section 1.

3. On page 2, line 14 renumber Section 2 to read Section 3.

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PURPOSE

The purpose of H.R. 4364 is to authorize the transfer of 570 acres of Bureau of Land Management Land located in Pima County, Arizona to the Pascua Yaqui Tribe of Indians. This land would be held in trust by the United States for the Tribe and would become part of the Tribe's reservation.

BACKGROUND

The Tribe presently has 202 acres of reservation land which was established by Public Law 95–375. The present land area is not sufficient to accommodate the 1,000 tribal members now living on the reservation in overcrowded conditions. Tribal efforts to develop light industry on the reservation have also been hampered by an insufficient land base. The transfer of lands provided for by H.R. 4364 will assist the Tribe in improving the socio-economic environment of its members.

LEGISLATIVE HISTORY

H.R. 4364 was introduced in the House of Representatives on December 15, 1981, by Congressman Morris Udall of Arizona. Hearings were held on the bill before the House Interior and Insular Affairs Committee on October 15, 1981. The bill was reported out of the Committee on December 12, 1981 and was passed by the House on December 20, 1981.

The Senate received H.R. 4364 on December 15, 1981. Hearings were held before the Select Committee on Indian Affairs on September 23, 1982. The Committee met on September 29, 1982 and, by unanimous vote of the Members, a quorum being present, ordered S. 2418 reported with amendments.

A companion bill to H.R. 6364, S. 1799, was introduced in the Senate by Senator Dennis DeConcini on October 30, 1981. This bill was referred to the Committee on Energy and Natural Resources. No hearings have been held.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, by unanimous vote of a quorum present, in an open business meeting on September 29, 1982, recommends that the Senate pass H.R. 4364, as amended.

AMENDMENTS

There are two amendments to this bill. The first amendment provides a technical amendment to correct the description of land to be taken in trust for the tribe. The second amendment provides protection for existing interests on the land.

SECTION-BY-SECTION ANALYSIS

Section 1. This section provides for certain described lands to be taken in trust for the Pascua-Yaqui Indian tribe.

Section 2. This section provides that existing rights of third parties be protected.

Section 3. This section provides that the State of Arizona shall exercise civil criminal jurisdiction over the lands as provided under existing law.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for H.R. 4364, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 30, 1982.

Hon. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs,
Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 4364, a bill to declare that the United States holds in trust for the Pascua Yaqui Tribe of Arizona certain land in Pima County, Arizona, as ordered reported by the Senate Select Committee on Indian Affairs, September 29, 1982.

Based on this review, it is expected that no additional cost to the government would be incurred as a result of enactment of this bill. The bill would provide that the United States hold in trust 570 acres of land near Tucson, Arizona, for the Pascua Yaqui Tribe of Arizona. This land is presently administered by the Bureau of Land Management and is valued by the Department of the Interior at $684,000 to $1,140,000. Since, in the absence of this legislation, the lands in question would be transferred to the State of Arizona under the State Indemnity Selection program, the bill will not result in any transfer of federal assets that would not otherwise take place.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill.

The Committee believes that H.R. 4364, as amended, will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATION

The legislative report on H.R. 4364 received by the Committee from the Department of the Interior is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 28, 1982.

Hon. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The following are the views of this Department on H.R. 4364, a bill "To declare that the United States holds in trust for the Pascua Yaqui Tribe of Arizona certain land in Pima County, Arizona."

We would have no objection to the enactment of H.R. 4364, if it is amended as suggested herein.

H.R. 4364 would require the Secretary of the Interior to hold in trust for the Pascua Yaqui Tribe of Arizona 570 acres of Federal lands presently managed by the Bureau of Land Management. Under the provisions of the bill, those lands would become a part of the tribe's reservation and would be subject to the criminal and civil jurisdiction of the State of Arizona.

We fully support the purposes of this legislation: to make the tribe more economically self-sufficient and improve its general socio-economic status. However, the transfer of Federal property to any entity, whether other Federal agency, State, Indian tribe or private citizen, without payment of fair market value to the Treasury, is inconsistent with Executive Order 12348 concerning the disposal of Federal property. Therefore, in addition to technical amendments, we recommend that funds equal to the amount of the fair market value of the subject lands be appropriated to the Secretary of the Interior to carry out the purchase of the subject lands. This will insure that the goals of H.R. 4364 can be achieved, without impairing other land management objectives. Payment for the land could be made through at least two possible mechanisms: direct appropriation in an amount equal to the market value of the subject land; or installments payments by the tribe over a reasonable period of time.

The ancestors of the Pascua Yaqui historically resided on lands in what is now the State of Senora in Mexico. During the reign of the Mexican Dictator Diaz, in the late 19th Century, the Yaqui Tribe fled to the United States, to avoid persecution. Around 1904, the Yaqui settled near Tucson, Arizona, in what became known as the Old Pascua Village, where they lived in a state of poverty and economic depression. However, they were able to maintain their tribal identity, language and culture.

Under the Act of October 8, 1964 (78 Stat. 1196), 202.76 acres of Federal land adjacent to Tucson, Arizona, were transferred to the Pascua Yaqui Tribe. However, section 4 of that Act provided that the Yaqui would not be eligible for any Federal services or benefits commonly made available to Indians because of their status as Indians. Pursuant to that Act, the tribe organized under State Articles of Incorporation as the Pascua Yaqui Association. Most of the tribal members moved to the new location, which became known as the new Pascua Village.

The tribe was able to improve its economic condition at its new location only to a certain extent, because many of the housing and other social programs of the Federal Government were denied to the tribe and its members due to section 4 of the 1964 Act and because of the fact that their land was not held in trust by the Secretary. Finally, in 1978, the enactment of P.L. 95–375 (92 Stat 712) provided Federal recognition to the Pasqua Yaqui Tribe of Arizona. Recognition included eligibility for all Federal services and benefits provided to Indians because of their status as Indians.

If enacted, H.R. 4364 would provide an additional 570 acres to the Pascua Yaqui Reservation. These lands are located west and south of Tucson, Arizona, and consist of two non-contiguous parcels, one of 10 acres and one of 560 acres. The ten-acre parcel is bounded on the east and south by the existing reservation. The 560-acre parcel has a ¼-mile common boundary with the westernmost boundary of the existing reservation and a ¾-mile common boundary with the north boundary of the San Xavier Reservation. All of the 570 acres are public lands under the jurisdiction of the Bureau of Land Management.

According to preliminary estimates by BLM, land values in the area under consideration range from $1,200–$2,000 per acre.

Enactment of H.R. 4364 would provide land for tribal programs designed to improve the economy of the tribe and its members through the development of housing, industry and agriculture. The tribal enrollment is approaching 5,000 members. This legislation would enable all tribal members to live on tribal lands, if they so desire.

We are also recommending that the bill be amended to protect valid existing rights of parties who, acting in good faith, have established rights-of-way, easements, mining claims, roads or other uses on or across the subject lands. Language should be included in the bill stipulating that such uses shall be allowed to continue, or providing that compensation shall be paid if uses are restricted or precluded as a result of enactment of the bill.

We also believe the bill should be amended to provide protection to existing water rights and priorities. Our amendments address this issue, as well.

Finally, we recommend that the land be transferred in fee instead of being held in trust status by the United States. This would allow the tribe to make greater use of the property as an integral part of its long range economic plan and will more likely enhance the prospects for non-Federal financing of economic development. Further, transferring the title in fee will avoid the jurisdictional problem described in the attached March 25, 1982, letter from our Phoenix Field Solicitor's Office to the Arizona Attorney General's Office.

Based upon the foregoing, we recommend enactment of H.R. 4364. However, we do suggest the following technical amendments:

1. The bill should be self-executing. The use of the words "shall be held by the United States" and "shall be a part of the reservation" imply that a future action will be required to effect the purposes of the bill. The bill should specify an effective date of the transfer, or merely transfer the lands immediately. This would eliminate any question and any administrative costs related to the transfer.

2. There are several existing use authorizations on the involved lands, including a pipeline right-of-way and a power line right-of-way. It is important that the law assure that the Tribe merely replaces BLM as landlord to all existing authorized uses, subject to the terms and conditions of such authorizations until they expire by their own terms. This could be accomplished by amending line 3 of page 1 of the bill to read "That, subject to all valid existing rights and use authorizations . . . and".

3. The bill should make it clear that "all right, title, and interest of the United States" includes both the surface and mineral estates.

4. The legal description of the land is inaccurate, and should read as follows: "(1) the east half of the southeast quarter of section 22; (2) the northeast quarter of the northeast quarter, the south half of the north half, the north half of the southeast quarter, and the southwest quarter of section 23; and (3) the southeast quarter of the northeast quarter of the northwest quarter, and the southwest quarter of the northwest quarter of section 24, all in township 15 South, Range 12 East, Gila and Salt River meridian.".

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of Administration's program.

Sincerely,

JOHN W. FRITZ,
Deputy Assistant Secretary.

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